

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

GEORGE E. JOHNSON, SR.,

Petitioner, No. CIV S-01-0657 FCD JFM P

vs.

MIKE KNOWLES, Warden,

Respondent. ORDER

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Petitioner is a state prisoner proceeding through counsel with an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local General Order No. 262.

On August 26, 2005, the magistrate judge filed findings and recommendations herein which were served on all parties and which contained notice to all parties that any objections to the findings and recommendations were to be filed within ten days. Respondent has filed objections to the findings and recommendations. Petitioner filed a reply.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 72-304, this court has conducted a de novo review of this case. Having carefully reviewed the entire file, the court finds the findings and recommendations to be supported by the record and by proper analysis.

1 Accordingly, IT IS HEREBY ORDERED that:

2 1. The findings and recommendations filed August 26, 2005, are adopted in full;

3 2. Petitioner's application for a writ of habeas corpus is granted on his claim that

4 his constitutional rights were violated by the use of jury instructions CALJIC 2.50.01 and 2.50.1

5 and denied in all other respects; and

6 3. Petitioner shall be released from custody unless the state elects to retry him

7 within sixty days from the conclusion of these federal habeas corpus proceedings.

8 DATED:September 9, 2005

9  
10 /s/ Frank C. Damrell Jr.  
11 FRANK C. DAMRELL JR.  
12 United States District Judge